



**King County
Department of Development
and Environmental Services**

900 Oakesdale Avenue Southwest
Renton, WA 98055-1219

DDES

97-182

RECEIVED
OCT 23 1997
FCC MAIL ROOM
October 20, 1997

Office of the Secretary
Federal Communications Commission
1919 M Street Northwest
Washington, DC 20554

BUCKET FILE COPY ORIGINAL

Re: Notice of Proposed Rulemaking 97-296

Dear Commissioners:

This letter is in response to your request for comments in the above-referenced action, which proposes federal pre-emption of state and local land-use regulation for the placement, construction and modification of broadcast transmission facilities for digital television (DTV).

King County, whose network affiliates are in the top 10 television market, concurs that local jurisdictions should act on DTV permit applications within a reasonable time to help ensure that the affiliates meet the FCC's on-air deadline of May 1, 1999. However, the industry also should be required to expeditiously submit their applications for review.

As of October 1, 1997, the industry had 19 months or approximately 570 days to begin emitting DTV signals as per the FCC's deadline. The industry is proposing an FCC rule that would allow state and local authorities 21 to 45 days to complete all permit processing. This recommendation equates to only 3.6 to 7.8 percent of the total time available for permit review and issuance by the May 1999 deadline. This would be an unnecessary and unreasonable restriction of local permit review -- unnecessary if the industry submits permit applications in a timely manner and unreasonable given the public's demand for adequate notice and oversight. We believe the industry would not agree to hold itself to such a rigorous schedule, i.e. submit permit applications within 21 to 45 days, thus should not expect local governments to adhere to such a schedule.

In order to comport with due process and public sentiment, local zoning codes often require extensive public notice, meetings and hearings. As a means to assure adequate review under state and local law, King County recommends that the FCC allow local jurisdictions 150 days (five months) to process and complete all review, approvals and appeals of DTV permits. If a jurisdiction is unable to complete a permit within this timeframe, we would fully support FCC authority to pre-empt the local process and

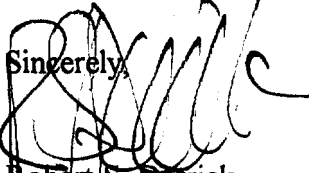
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establish land-use conditions for that permit. A 150-day review period would ensure adequate review and still allow the industry ample time to prepare and submit permit applications.

Should the FCC proceed to adopt the industry's proposed timeline for permit review such action would primarily affect conditional use permits, special use permits, application of the State Environmental Protection Act (SEPA), and the sensitive area review process. Structural review still could occur under the Uniform Building Code (UBC) within the proposed timeline (21 to 45 days). However, if the FCC were to classify broadcast towers to be public utilities (currently exempt from review by UBC), King County would be allowed essentially no review process. This is a great concern because, in addition to the towers affected by DTV modifications, a large number of FM broadcast stations which have co-located their antennae on television towers may be forced by windloading and weight issues to relocate or construct new transmission facilities. These facilities must be reviewed to ensure public safety.

King County also encourages continued research regarding radio frequency emissions. At this time there are many unknowns regarding the quality of the DTV signals to be broadcast from current or initial proposed locations, and over time we expect the industry may want to relocate their systems. Indeed, local broadcasters could seek to consolidate all facilities at a particular site, which likely would lead to significant public concern about total radio frequency emissions. Regardless of whether the FCC pre-empts local regulation in this area, the industry, FCC, and local jurisdictions must be prepared to answer the public's concerns about levels of radio frequency emissions and potential health effects.

In summary, King County does not support federal pre-emption of state and local land-use regulations under the proposed 21-to-45-day review period. However, we recognize the need to expedite DTV permits and recommend a 150-day review and appeal period. We also do not support a definition of broadcast towers as "public utilities." Finally, we encourage FCC leadership, in cooperation with the industry and local jurisdictions, to address concerns about potentially harmful effects of radio frequency emissions.

Sincerely,

Robert S. Derrick
Director

cc: Greg Kipp, Deputy Director
Mark Carey, Manager, Land Use Services
Sophia Byrd, Code Development Coordinator
Paul Wozniak, Land Use Planner
Chuck Mize, Director, King County Community and Government Affairs
Tim Hatley, Senior Policy Advisor to the Executive

97-182

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FCC MAIL ROOM

October 16, 1997

DOCKET FILE COPY ORIGINAL

Secretary
Federal Communications Commission
Washington, D.C. 20554

Dear Sir:

I am writing in reference to the proposed petition from the National Association of Broadcasters and the Association for Maximum Service Television that would change the rules to give the Federal Communications Commission the authority to preempt local and state zoning and other land-use regulations; and allow the tower industry to construct towers just about anyplace they want to place them. This proposed petition appears to preempt the authority of the Federal Aviation Administration and would take away their authority to determine whether a potential tower poses a hazard to air navigation, enroute flights, or use of airports.

It is imperative that we protect the authority of the FAA and the state and local officials to legislate and to provide zoning ordinances and land-use regulations that will protect public and private airports and all air navigation. Please do not allow this NPRM to be enacted. Please say NO! to Docket No. 97-182 and/or any other proposed rules or legislation that would take away any authority from the FAA and the local and state governing officials.

Sincerely,

La Roy L. Wright

W Roy & Eileen Wright
24 Cessna Blvd.
Rt. 18 Box 630
Lake City FL 32025

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Broadcaster-backed NPRM would curtail FAA's authority over tower construction

By CHARLES SPENCE

WASHINGTON, DC—Responding to a petition from the National Association of Broadcasters and the Association for Maximum Service Television, the Federal Communications Commission has issued a notice of proposed rule making that would let the FCC preempt local and state zoning and other land-use regulations and permit construction of TV towers just about anywhere the broadcasters want to place them.

The NPRM, as it is written, even seems to preempt authority of the Federal Aviation Administration. Preemption of local and state authority by the FCC would permit tower construction if the lighting and marking were approved by the FAA or the FCC. Thus, if enacted, the FCC—not the FAA—could determine whether a potential tower does or does not pose a hazard.

The problem arises from the change to digital signals for television. The FCC is requiring the affiliates of the top four networks in the 10 top markets to be on the air with digital signals by May 1, 1999. Affili-



Capital
Comments

ates in the 11th to 30th markets must have their digital facilities by Nov. 1, 1999. All other commercial stations are required to construct their facilities by the year 2002, and noncommercial stations by 2003.

Broadcasters say this accelerated schedule will require extensive tower construction and re-siting. Two-thirds of all existing television broadcasters will need new or upgraded towers, involving more than 1,000 towers. Also, because of the increased weight and wind loading, a large number of co-located FM radio stations will have to be relocated, probably with new tower construction.

The broadcast industry says that local and state laws are inhibiting their progress toward meeting the deadlines set by the FCC. They want the federal commission to have full authority to allow the broadcasters to build where they want to. Aviation interests worry that this could result in hazards to flight.

Henry Ogrodzinski, president of the National Association of State Aviation Officials, said adoption of this rule "could be devastating." He said states, the FAA, airports and local officials have worked long and hard to put tall structures and zoning regulations in place to protect airports and en route flight.

Local zoning commissions, airports and pilot groups are being urged to support the Washington aviation interests by responding to the proposed rule and also to contact their

members of Congress.

Deadline for submitting comments to the FCC is Oct. 30. Comments should be sent to: Secretary, Federal Communications Commission, Washington, DC 20554. Refer to Docket No. 97-182.

Political favoritism?

Timing is important not only in things to do but also in things not to do. Take the timing of an airport grant, for instance.

The FAA announced a grant of \$5 million to the Massachusetts Port Authority on Sept. 10, just days after Jane Garvey took the oath of office as FAA administrator. Garvey had been director of the Boston airport before joining the Clinton administration as deputy

director of the Federal Highway Administration. The money, according to the FAA, will be used to insulate approximately 100 homes in East Boston, Winthrop, Revere and South Boston.

No doubt, the decision to make the grant to Massachusetts was well underway before Garvey took office, and perhaps she might not have been aware of the timing of the announcement. Timing of the release, however, was unfortunate. The new administrator has enough troubles taking over the agency without adding to them with an action that could be seen by some as political favoritism.

Charles Spence is GANews & Flyer's Washington, DC, correspondent.

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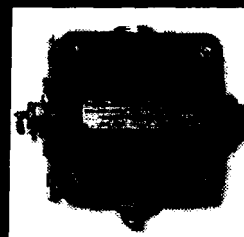
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Secretary
Federal Communications Commission
Washington, D.C. 20554

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It is imperative that we protect the authority of the FAA and the state and local officials to legislate and to provide zoning ordinances and land-use regulations that will protect public and private airports and all air navigation. Please do not allow this NPRM to be enacted. Please say NO! to Docket No. 97-182 and/or any other proposed rules or legislation that would take away any authority from the FAA and the local and state governing officials.

Sincerely,

Gary Blake

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members of Congress.

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Charles Spence is GANews & Flyer's Washington, DC, correspondent.



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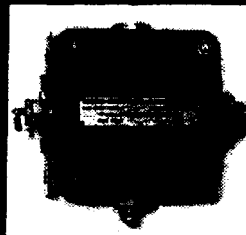


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Board of Aviation Commissioners
1300 N. Highway 212
Michigan City, IN 46360
Phone 219-872-0121



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October 14, 1997

FCC MAIL ROOM

DUCKET FILE COPY ORIGINAL

Office of the Secretary
Federal Communications Commission
Washington, DC 20554

RE: Request for Comments
47 CFR Part 1

Dear Sir/Madame:

We are writing in opposition to the proposed rule making entitled *Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Transmission Facilities*. This proposed FCC rule will limit or even negate any authority that the Federal Aviation Administration (FAA), Indiana Department of Transportation - Aeronautics Section, and our local zoning boards will have over transmission towers. It is critical to the safety of our airport facility that there be "checks and balances" to assure that no new obstructions to our airports are developed. By accelerating the review process, unsafe decisions could be made by the FCC, which would mean a loss of utility at our airport!

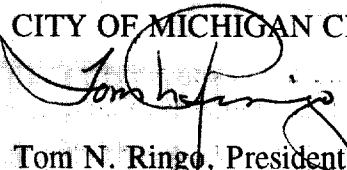
As the operator of an airport, we are very concerned that this proposed rule will severely limit our ability and the powers of the agencies that we work with to protect our airport from the encroachment of tall towers.

We oppose the proposed rule as it is now written. Recognizing that new technology is requiring the installation of new transmission facilities, we encourage you to find ways to allow the installation of these towers in harmony with the airport facilities that are also critical to our nation's economic health. Giving the FCC preemptive power over state and local zoning would place the interest of DTV implementation ahead of the interest of existing aviation facilities.

Thank you for considering these views as you evaluate this proposed rule.

Sincerely,

CITY OF MICHIGAN CITY


Tom N. Ringo, President
Board of Aviation Commissioners

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Sheila Brillson, Mayor

97-182

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OCT 23 1997
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Federal Communications Commission
FCC Dockets Branch
Room 239
Docket # 97-296
1919 M Street NW
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

October 20, 1997

RE: FCC proposal to allow the preemption of state and local zoning ordinances if the Agency determines they would interfere with certain broadcast facilities.

This proposal does not acknowledge that there is a serious safety conflict with the placement of tall towers around airports. This proposed rule must take into consideration that some of these state and local zoning ordinances are designed to protect the airspace around our airports. If this hazard is not taken into consideration there will be a definite reduction of safety for the flying public. The people who wrote this proposal may understand that the placement of tall towers near airports is very undesirable. But you must recognize that if the issue of aircraft safety is not written into the proposal, someone will succeed in placing a tower in a very undesirable location that will produce a serious safety hazard near one of our airports.

It is extremely important that this proposal not be allowed to preempt all zoning laws enacted to prevent these structures from being erected near airports.

This proposal should only allow preemption under the most stringent scrutiny. Placing tall towers with other tall towers in groups should be the highest priority. Then the tall towers should not be allowed to be built any higher than absolutely necessary.

Remember we should not sacrifice aviation safety, just for better television reception.

Sincerely,



Everitt B. duPont

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October 16, 1997

OCT 23 1997

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Secretary
Federal Communications Commission
Washington, D.C. 20554

Dear Sir:

I am writing in reference to the proposed petition from the National Association of Broadcasters and the Association for Maximum Service Television that would change the rules to give the Federal Communications Commission the authority to preempt local and state zoning and other land-use regulations; and allow the tower industry to construct towers just about anyplace they want to place them. This proposed petition appears to preempt the authority of the Federal Aviation Administration and would take away their authority to determine whether a potential tower poses a hazard to air navigation, enroute flights, or use of airports.

It is imperative that we protect the authority of the FAA and the state and local officials to legislate and to provide zoning ordinances and land-use regulations that will protect public and private airports and all air navigation. Please do not allow this NPRM to be enacted. Please say NO! to Docket No. 97-182 and/or any other proposed rules or legislation that would take away any authority from the FAA and the local and state governing officials.

Sincerely,

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Virginia Hollins
Cannon Creek Airpark
RR 18 Box 592
Lake City, FL 32025

P.S. As a pilot, I am really concerned about this matter. We live on a private airport and our only protection is from local and state zoning.



OHIO DEPARTMENT OF TRANSPORTATION

CENTRAL OFFICE, 25 S. FRONT STREET, P.O. BOX 899, COLUMBUS, OHIO 43216-0899

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97-182

October 17, 1997

OCT 23 1997

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street NW
Washington, D.C. 20037
Attn: FCC Docket 97-296

FCC MAIL ROOM

DOCKET FILE COPY ORIGINAL

Re: NPRM FCC 97-296, Preemption of State and Local Zoning and Land Use
Restrictions on the Siting, Placement and Construction of Broadcast Station
Transmission Facilities

Dear Mr. Secretary:

The Ohio Department of Transportation strongly opposes the proposed rule that would allow FCC preemption of state and local zoning and land use restrictions on the siting, placement and construction of broadcast station transmission facilities.

The Ohio Airport Protection Act (Ohio Revised Code 4561.30 to 4561.39 and 4561.99) prohibits the installation of any structure or object of natural growth which will penetrate into navigable airspace, as defined by Federal Aviation Regulations Part 77, without obtaining a permit from the Ohio Department of Transportation.

The Ohio Airport Protection Act is intended to promote the safety of air travel by ensuring that telecommunications towers and other structures are not obstacles to air navigation. **If it is determined that a proposed structure is an obstacle to air navigation**, the Ohio Department of Transportation can require that the structure be lighted and marked or prohibit construction. The Department has been able to work successfully with permit applicants to find a combination of lighting, marking, and re-siting of structures so as to not pose a threat to air safety.

It is important to note that while the Federal Aviation Administration establishes standards for obstructions to air navigation, it does not have enforcement authority. Congress left the enforcement of regulations concerning obstructions to the states. Consequently the Ohio Legislature passed the Ohio Airport Protection Act in 1991.

Additionally, the proposed rule creates a conflict between regulatory agencies. The FAA has established regulations concerning obstruction standards to protect the safety of the flying public. The FCC now proposes a rule that would bypass those regulations.

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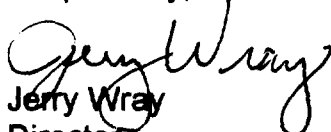
Ohio Department of Transportation
Comments on FCC 97-296
Page 2

In addition to threatening aviation safety, the proposed rule could impinge on the use and accessibility of publicly owned airports that have been built up over many years and at great financial cost to taxpayers.

One apparent concern of the Petitioners is with potential delays resulting from the administration of state and local zoning and land use restrictions. In most cases the Ohio Department of Transportation can process a permit application within 7 days. In Ohio, the Aviation Telecommunications Power Coordination Committee (ATPCC), a standing committee composed of Ohio Department of Transportation staff and representatives from the telecommunications and power industries, has been extremely successful in promoting compatibility between communications towers, power transmission facilities, and airports.

In conclusion, the Ohio Department of Transportation strongly opposes the proposed rule that would allow FCC preemption of state and local zoning and land use restrictions on the siting, placement and construction of broadcast station transmission facilities. The broadcast industry should be required to comply with state regulations during the implementation of digital television so the safety of the flying public is preserved.

Respectfully,



Jerry Wray
Director

JW:dd

c: Ohio Congressional Delegation

97-182

MICHIANA REGIONAL TRANSPORTATION CENTER



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DOCKET FILE COPY ORIGINAL

Office of the Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: Request for Comments
47CFR, Part 1

Dear Sir/Madam:

On behalf of the St. Joseph County Airport Authority, I am writing in opposition to the proposed rule making entitled "Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Transmission Facilities." This proposed FCC rule will limit or even negate any authority that the Federal Aviation Administration, the Indiana Department of Transportation-Aeronautics Section, and the St. Joseph County Zoning Board will have over transmission towers. It is critical to the safety of our airport facility and to the traveling public of the Michiana area that there be "checks and balances" to assure that no new obstructions to our airports are developed. By accelerating the review process, unsafe decisions could be made by the FCC which would mean a loss of utility at our airport!

As the operator of this airport, the Airport Authority Board is very concerned that this proposed rule will severely limit the abilities and powers of the agencies that we work with to protect our airport, the Michiana Regional Transportation Center, from the encroachment of tall towers.

We oppose the proposed rule as it is now written. Recognizing that new technology is requiring the installation of new transmission facilities, we encourage you to find ways to allow the installation of these towers in harmony with the airport facilities that are also critical to our nation's economic health. Given the FCC pre-emptive power over state and local zoning will place the interest of DTV implementation ahead of the interest of existing aviation facilities. It is inconceivable to the St. Joseph County Airport Authority that a clearer television picture could possibly be considered more important than the safety of the traveling public of the Michiana area and of the United States in general. Further, it is a well known social fact that new

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Office of the Secretary - Federal Communications Commission

Page Two

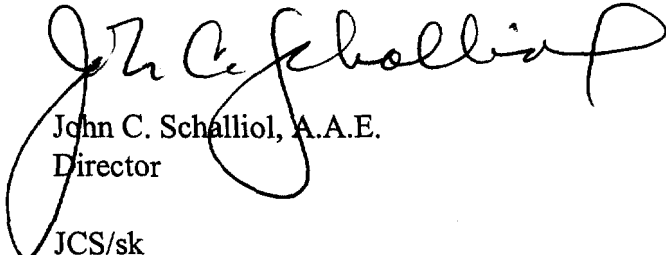
October 17, 1997

technology is outmoded almost as soon as it is invented. In a very short time the cable companies will take over the distribution of higher quality television transmission than DTV can possibly provide, thereby rendering the towers that are now being considered for construction obsolete. The Airport Authority Board, for one, would be willing to forego the imposition of a landscape full of towers to provide a slightly better television picture in the interests of aviation safety.

Thank you for considering these views as you evaluate this proposed rule.

Sincerely yours,

ST. JOSEPH COUNTY
AIRPORT AUTHORITY, By



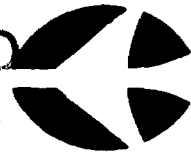
John C. Schalliol, A.A.E.
Director

JCS/sk

cc: Senator Richard Lugar (IN)
Senator Dan Coates (IN)
Representative Tim Roemer (IN)
Representative Fred Upton (MI)

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OCT 23 1997



COLUMBUS MUNICIPAL AIRPORT

97-182

October 20, 1997

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Office of the Secretary
Federal Communications Commission
Washington, DC 20554

Dear Sir/Madame:

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Thank you for considering these views as you evaluate this proposed rule.

Sincerely,

Wendell R. Ross
Director

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16 October 1997

97-182

Federal Communications Commission
191 M St., NW,
Washington, D.C. 20554

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OCT 23 1997

Ref: No Docket Number available to me at the moment.

FCC MAIL ROOM

Sirs,

Please assign this message to the appropriate office.

This is to request that you deny the petition (brought by certain broadcasters and associations) that the FCC pre-empt state and/or local restrictions on the placement, construction and modification of radio, television and other communication transmission towers and similar facilities.

My interest is as a pilot already endangered by lax FAA interest and effort in protecting aircraft from a proliferation of such towers. Aircraft have repeatedly crashed into these towers when they have been constructed without regard to air safety. The FAA usually doesn't see a problem unless the tower would obviously interfere with the Instrument Flight Rules (IFR) system, yet the majority of air traffic is not operating under IFR, and almost all sport flying is operating outside that system. The danger is great especially on approaches to airports and is usually the object of local zoning and other restrictions. Clearly it is the local authorities and not the FCC that is in the best position to be aware of these dangers.

The broadcaster's request strikes me as simply another attempt to monopolize public airspace without having to consider the safety of other users.

Thank you for your attention.



Jack Bennett
P. O. Box 364
DeKalb, IL 60115

(815) 756-7712

105035.1264@compuserve.com

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